date was the bailor, by an extension of the rule, given standing in court. Until that time, then, his only means of relief lay in holding the bailee strictly to account—as insurer. Thus the true condition of affairs was such that "the bailee was answerable to the owner because he was the only person who could sue," but later, by an inversion of cause and effect "it was said he could sue because he was answerable to the owner." Accepting this explanation (which is not altogether consistent with that in 2 Poll. & Mait. Hist. Eng. Law, 170) of the statements in Beaumanoir and the year books, *supra*, the Court of Appeal reaches the conclusion that *Claridge* v. *S. S. Tramway Co.*, *supra*, was wrongly decided, and holds that the Postmaster-General, in the principal case, was entitled to recover the full value of the lost mail matter. In other words, the saying is true of bailees as well as of other possessors that "the person who has possession has the property . . . for against a wrongdoer possession is a title." CAMPBELL, C. J., in *Jeffries* v. *Railway Co.* (1856) 5 E. & B. 802, 806.

This is the doctrine contended for by American text-writers and adopted in the leading case of *White* v. *Webb* (1842) 15 Conn. 302, and in such other American decisions on the point as have come to our notice. No inconvenience can result, for, as is said by COLLINS, M. R. (p. 61), what the bailee "has received above his own interest he has received to the use of his bailor," and "the wrongdoer, having once paid full damages to the bailee, has an answer to any action by the bailor."

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EVIDENCE—NEW YORK RULE AS TO ADMISSIONS BY THE ASSIGNOR OF PERSONAL PROPERTY.—Admissions by the owner of land while holder of the title are universally admitted against his subsequent grantee. So, too, in almost every jurisdiction, the admissions of the owner of personal property, made during his ownership, are allowed in evidence against his assignee, whether a mere volunteer or for value. But in New York, ever since the leading case of *Paige* v. *Cagwin* (1843) 7 Hill, 379, it has been well-settled law that such admissions are not good evidence as against a subsequent assignee of personal property for value. It was there held that statements made by the payee of a promissory note while he owns and holds it, are not admissible against one to whom it is subsequently transferred for value after maturity. The question now arises as to the position of a mere volunteer, and in determining this the language in *Paige* v. *Cagwin* becomes of importance. At page 379 the court speaks as follows: "It may I think be laid down as a general proposition, that the cases in which such evidence has been held admissible are those only where the declarations were made by a party really in interest, or by one through whom the plaintiff claimed as a privy by representation, as in cases of bankruptcy, death and others of a similar character. Where the rule is applicable, there must be 'an identity of interest' between the assignor and assignee. That relation appears to me to be based on the fact that the rights of the assignor continue and are represented by the assignee. Where a person

becomes a purchaser of a *chose* in action or a chattel, for a valuable consideration, his rights are independent of the assignor and beyond his control." These words are entitled to particular consideration as the latest expression of the Court of Appeals in *Merkle* v. *Beidleman* (1900) 165 N. Y. 21, 24, where they are quoted in full.

Subsequent decisions in this State, while professing to follow *Paige* v. *Cagwin*, are admittedly conflicting and unsatisfactory. *Merkle* v. *Beidleman* (1898) 30 App. Div. 14. Beginning with the cases rejecting the evidence, the first in point of time, and the one apparently in large part responsible for the confusion, is *Truax* v. *Slater* (1891) 86 N. Y. 630, an action by an assignee for the benefit of creditors. The defendant offered in evidence admissions of the plaintiff's assignor made prior to the assignment. This was rejected in the court below on the short ground that "the mere declarations of an assignor of a *chose* in action, forming no part of any *res gestæ* are not competent to prejudice the title of his assignee, whether the assignee be one for value, or merely a trustee for creditors, and whether such declarations be antecedent or subsequent to the assignment." The decision was affirmed in the same words in the Court of Appeals. The case there is not reported in full, no reasons are given, and the decisions in *Von Sachs* v. *Kretz*, *infra*, is not even mentioned. The language just quoted is repeated in *Bush* v. *Roberts* (1888) 111 N. Y. 284, and *Flannery* v. *Van Tassel* (1891) 127 N. Y. 631. The transfers, however, were for value, and the quotation in no way necessary to the decisions. But *Vidvard* v. *Powers* (1884) 34 Hun, 221, held that admissions of the assignor while owner of the property and *prior* to the assignment were inadmissible against his assignee for the benefit of creditors. *Flagler* v. *Wheeler* (1886) 40 Hun, 125; *Flagler* v. *Schoeffel* (1886) 40 Hun, 178; *Morris* v. *Wells* (1889) 7 N. Y. Supp. 61, 63; *accord.* Finally, in *Van Aernam* v. *Granger* (1895) 86 Hun, 476, the court repeats the passage from *Truax* v. *Slater*—a mere *dictum* as the assignment was for value. All of these cases are expressly made to rest on the decision in *Truax* v. *Slater*, *supra*, and in the first three great stress is also laid on *Bullis* v. *Montgomery* (1872) 50 N. Y. 352, 358. What this latter case in effect decided was that the admissions of an assignor, made *before* he became the owner of the property in question, are not admissible against his subsequent assignee for the benefit of creditors. The court, it is true, continued: "It is also suggested that there was such a privity . . . such an identity or community of interest, as made these declarations competent evidence. . . . But there is no such identity of interest between an insolvent assignor in trust for creditors and his assignee. The latter holds primarily for the creditors, and for these in hostility to the assignor."

The most important authority in favor of the admissibility of the evidence is *Von Sachs* v. *Kretz* (1878) 72 N. Y. 548, which held the declarations of a bankrupt, made before bankruptcy, admissible as evidence against the assignee in bankruptcy. *Paige* v. *Cagwin*, *supra*, is shown to have been confined to an assignee for value,

while reference is made to the earlier cases of *Brisbane* v. *Pratt* (1847) 4 Denio, 63, and *Green* v. *Givan* (1865) 33 N. Y. 343, 369. The first of these is a decision squarely in point, as the admissions of the holder of a note were allowed in evidence against a subsequent indorsee who was not shown to have paid value. *Paige* v. *Cagwin* was quoted and discussed, as it is also in *Schenck* v. *Warner* (1862) 37 Barb. 258, 263. This last case is cited with approval in *Lyon* v. *Ricker* (1894) 141 N. Y. 225. In *Parkhurst* v. *Higgins* (1885) 38 Hun, 113, the statements of a mortgagee were admitted against his residuary legatee. So in *Kennedy* v. *Wood* (1889) 52 Hun, 48, the declarations of an assignor were held admissible against his assignee for the benefit of creditors on the express ground that he was not a purchaser for value, *Passavant* v. *Cantor* (1891) 17 N. Y. Supp. 37, *accord;* while in *Baird* v. *Baird* (1894) 81 Hun, 300, affirmed in 145 N. Y. 659, the admissions of the testator were held to be evidence against his personal representative. See, also, the wretchedly reported case of *Smith* v. *Sergent* (1875) 2 Hun, 107. *Merkle* v. *Beidleman*, already mentioned, is the latest decision in point. The court below (1898) 30 App. Div. 14, admitted the evidence on the ground of lack of good faith in the assignee. On appeal this was held error (1900) 165 N. Y. 21, the purchase having been for value; and in the opinion the language from *Paige* v. *Cagwin* already referred to was quoted.

The foregoing, there is reason to believe, comprise all the New York cases on the subject. It will be noted, however, that the dissension has arisen chiefly over assignees in bankruptcy or insolvency. Apparently the evidence will be admitted in the case of legatees, and indeed it could hardly be otherwise in view of the language of *Paige* v. *Cagwin*, repeatedly affirmed. An analogous position would be that of a mere donee *inter vivos*, and possibly of an administrator or executor. Then comes in question the validity of the distinction taken in *Bullis* v. *Montgomery* (*cf.*, *contra*, the reasoning of *Passavant* v. *Cantor*, *supra*), as to the standing of an assignee in insolvency, analogous to which appears to be that of an assignee in bankruptcy. On these points the Court of Appeals carefully refrained, in *Merkle* v. *Beidleman*, from all expression of opinion.—B. R. R.

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REAL PARTY IN INTEREST UNDER THE CODES. One of the most distinctive features of the code system of procedure is the provision that actions must be brought by the real party in interest. Perhaps the chief object of the rule was to allow an assignee of a *chose* in action to sue in his own name. *Schaefer* v. *Henkel* (1878) 75 N. Y. 378. In some States it was expressly provided that legal title to most *choses* in action might be transferred. Alabama Code of 1852, § 1530 (now § 876); Iowa Code of 1851, § 949 (now § 3044). In New York the same result was apparently reached by judicial construction of the real party in interest section, *Petersen* v. *Chemical Bank* (1865) 32 N. Y. 21, although the point was not conclusively settled until the enactment of the Code of Civil Pro-